Supreme Court, U.S.
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No. 99-

IN THE

Supreme Court of the United States

LUISA SOTO-RIVERA,

Petitioner,

v.

DOMINISA SANTIAGO-GUADARRAMA, in her Personal and Official Capacity, as School Superintendent, RIO PIEDRAS I DISTRICT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Is the Commonwealth of Puerto Rico immune under the Eleventh Amendment from a civil rights action brought under 42 U.S.C. § 1983?

II. May federal courts establish heightened or elevated pleading requirements for actions against municipalities brought under 42 U.S.C. § 1983?

III. Are classifications based on political affiliation sufficiently invidious to warrant liability under 42 U.S.C. § 1985(3)?

LIST OF PARTIES TO THE PROCEEDING

All of the parties to the proceeding may be found in the caption of this Petition.

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OPINIONS BELOW

The unpublished Order of the United States Court of Appeals for the First Circuit, No. 98-2165, is reproduced at page 1a of the Appendix.

The unpublished Opinion Order of the United States District Court for the District of Puerto Rico, Civil No. 98-1061(JP) is reproduced at page 5a of the Appendix.

STATEMENT OF JURISDICTION

The original unpublished Order of the United States Court of Appeals for the First Circuit was filed on October 5, 1999.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1), which permits review by writ of certiorari "in any civil or criminal case, before or after rendition of judgment or decree."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Title 42, Section 1983, of the United States Code provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42, Section 1985(3), of the United States Code provides in relevant part:

> If two or more persons in any State or Territory conspire . . . for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws [and] . . . if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

A. Jurisdiction of the Courts Below

The United States Court of Appeals for the First Circuit, the order of which is sought to be reviewed in this Petition, had jurisdiction of this matter pursuant to 28 U.S.C. § 1291 ("Final decisions of district courts"), which states in part:

> The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States. . . .

The United States District Court for the District of Puerto Rico had jurisdiction over this case pursuant to 28 U.S.C. § 1387(a) ("Pendent jurisdiction") and violations of the Petitioner's derivative rights under Puerto Rico Laws Ann. Title 31, Section 5141.

B. Facts

The Petitioner Luisa Soto-Rivera, a former elementary school principal, was hounded out of the Puerto Rico Department of Education by a campaign of slander, innuendo, harassment, persecution, and political discrimination by the Respondents, six officials of the Department of Education (the "government officials"), who were acting under color of authority when they conspired against the Petitioner. The Petitioner has been part of the school system since 1977.

The campaign of harassment and discrimination initiated by the government officials caused the Petitioner to lose her job as principal of the Prisco Fuentes Allende School. Most of the government officials are members of the Populares Party. The Petitioner is an activist of the NPP political party.

The Petitioner was the principal at the school from 1993 until August 31, 1995. Her problems began when she reported two teachers, members of the Federation of Teachers, for conduct unbecoming teachers. The teachers were charged with engaging in lascivious acts against the school children and causing physical and mental abuse. These officials are also members of the Department of Education and are active members of the teachers federation.

Soon thereafter, the Federation of Teachers, with the support of the government officials, initiated a series of actions aimed at discrediting the Petitioner. These included accusations that the Petitioner had abused children and teachers, had threatened and mocked teachers, was incompetent, and was guilty of malfeasance in office. These charges resulted in charges being lodged against the Petitioner, dated August 31, 1995, to summarily dismiss the Petitioner from her position.

After the Petitioner filed an appeal, case number DE-OE-95-43. A hearing was held before Juan Ortiz Rodriguez, a hearing examiner for the Department of Education. In an order dated March, 1997, he found in favor of the Petitioner on the ground that there was insufficient proof to support the disciplinary acts against her.

The government officials continued to obstruct the Petitioner in the performance of her duties as principal and sabotaged her work. They prevented her from attending meetings, falsely accused her of incompetence and dishonesty, and conspired with the Federation of Teachers to arouse animosity against her in parents and students. The motivation of the government officials was primarily political; all of them were either "Populares" or "Independenistas." The Petitioner was accused by the government officials of being a member of the NPP party and trying to fill the school with "little NPPs."

Later, at the instance of one of the government officials from the Department of Education, Irma Gimenez Lopez, the Petitioner was transferred to the Superintendents office in Rio Pedras, Puerto Rico, as a helper, but without her duties. The persecution of the Petitioner continued, causing her mental health to deteriorate to the extent that she is still under psychiatric care.

The District Court dismissed most of the Petitioner's claims with prejudice and certain of her supplemental claims without prejudice. The United States Court of Appeals for the First Circuit affirmed.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT SHOULD ALLOW THE WRIT OF CERTIORARI TO RULE DEFINITIVELY ON WHETHER THE COMMONWEALTH OF PUERTO RICO IS IMMUNE UNDER THE ELEVENTH AMENDMENT FROM A CIVIL RIGHTS ACTION BROUGHT UNDER 42 U.S.C. § 1983.

The District Court dismissed the Petitioner's § 1983 claim on the ground that Puerto Rico and its officials enjoy immunity under the Eleventh Amendment from a civil rights action. Indeed, the First Circuit ruled in *Culebras Enterprises Corp. v. Rivera Rios*, 813 F.2d 506, 516 (1st Cir. 1987), that the Eleventh Amendment bars the recovery of damages in a federal court against the Commonwealth of Puerto Rico.

This Court has never ruled on this issue, however. In *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 141 (1993), this Court considered the narrow issue of whether the order of a federal district court denying a claim by a State or a state entity to Eleventh Amendment immunity from suit in federal court may be appealed under the collateral order doctrine of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). However, it never actually considered whether Puerto Rico enjoys such Eleventh Amendment Immunity. Moreover, as

noted in Justice Blackmun's dissent in the Puerto Rico case, the members of this Court are split on whether the Eleventh Amendment embodies a broad principle of state immunity from suit in federal court. In his dissent in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 303 (1985), Justice Blackmun stated that this expansive view of the Eleventh Amendment "simply cannot be reconciled with the federal system envisioned by our Basic Document and its Amendments."

Actual or potential litigants should not be left to speculate about the existence and the extent of the immunity from suit that a state or the Commonwealth of Puerto enjoys. This Court should seize this opportunity to put the debate on this issue to rest.

II.

THIS COURT SHOULD ALLOW THE WRIT OF CERTIORARI TO RESOLVE A SPLIT OF AUTHORITY AMONG THE COURTS OF APPEALS REGARDING WHETHER FEDERAL COURTS MAY ESTABLISH HEIGHTENED OR ELEVATED PLEADING REQUIREMENTS FOR ACTIONS AGAINST MUNICIPALITIES BROUGHT UNDER 42 U.S.C. § 1983.

The Petitioner's amended complaint in this action was deemed inadequate by the courts below because of their adherence to the principle that federal courts may establish heightened or elevated pleading requirements for actions against municipalities under 42 U.S.C. § 1983. The Courts of Appeals are divided on this issue, however, and this Court has an opportunity to resolve this conflict. This issue is of enormous consequence to citizens throughout the United

States and its commonwealths who wish to assert their rights under § 1983 when they find themselves the victims of unlawful behavior by municipalities or municipal officials.

The debate on this issue can be traced to this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 166-67 (1993). In that case, homeowners instituted civil rights actions against local officials acting in their official capacities, county, and municipal corporations. The suits alleged that searches of the plaintiffs' homes for drugs violated the homeowners' rights under the Fourth Amendment. Reviewing a decision by the lower court granting a motion to dismiss, this Court held that the Fifth Circuit's imposition of a "heightened pleading standard" for pleading a complaint under § 1983, in contrast to the standard for other kinds of claims for relief, could not be squared with the liberal system of "notice pleading" established by the Federal Rules of Civil Procedure. This Court noted that Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* at 168. The Court went on to state that it was not considering whether its "qualified immunity jurisprudence would require a heightened pleading in cases involving individual government officials." *Id.* at 166-67.

As noted in the opinion of the District Court below, some courts have been "reluctant" to extend the holding of *Leatherman* beyond municipal liability cases. *See, e.g.*, *Breidenback v. Bolish*, 126 F.3d 1288, 1292 n.2 (10th Cir. 1997).

In light of the stringest test to which the courts below subjected this *pro se* Petitioner's second amended complaint,

this Court's statement in *Conley v. Gibson*, 355 U.S. 41, 47 (1957), bears restating:

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

In short, it is time that this Court resolved the ambiguity about whether a heightened pleading is required in cases involving individual government officials. If the courts below had followed the *Leatherman* standard in this case, the Petitioner would have been given her day in court to vindicate her civil rights.

III.

THIS COURT SHOULD ALLOW THE WRIT OF CERTIORARI TO RESOLVE A SPLIT OF AUTHORITY AMONG THE COURTS OF APPEALS REGARDING WHETHER CLASSIFICATIONS BASED ON POLITICAL AFFILIATION ARE SUFFICIENTLY INVIDIOUS TO WARRANT LIABILITY UNDER 42 U.S.C. § 1985(3).

Although the District Court declined to reach the issue of whether classifications based on political affiliation are sufficiently invidious to warrant liability under 42 U.S.C. § 1985(3), this unsettled area of law, which is central to the Petitioner's case, is of wide-ranging importance and should be addressed by this Court.

A plaintiff who asserts a violation of 42 U.S.C. § 1985(3) must allege the existence of

> (1) a conspiracy, (2) a conspiratorial purpose to deprive a person or class of persons, directly or indirectly, of the equal protection of the laws or of equal privileges and immunities under the laws, (3) an overt act in furtherance of the conspiracy, and (4) either (a) an injury to person or property, or (b) a deprivation of a constitutionally protected right or privilege.

Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996).

In interpreting § 1985(3), this Court explained in *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971), that the language of the statute

> requiring intent to deprive of *equal* protection or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.

The Petitioner alleged in her second amended complaint that government officials conspired to oust her from her position as a school administrator because of her political affiliation. The officials were members of political parties known as the "Populares" or "Independentistas," while the Petitioner was known as an activist in the NPP Party. The Petitioner contended that she was the victim of retaliation for having disciplined members of her staff who were also member of the "Populares" and "Independentistas" political parties.

A split of authority currently exists regarding whether political classes are within the scope of protection afforded by § 1985(3). Some federal courts have concluded that such protection exists. *See, e.g., Conklin v. Lovely*, 834 F.2d 543, 549 (6th Cir. 1987) (holding that § 1985(3) may shield a political class); *Perez v. Cucci*, 725 F. Supp. 209, 252 (D.N.J. 1989), *aff'd without op.*, 898 F.2d 139 (3d Cir. 1990) (holding the same).

The legislative history of the statute was emphasized in *Keating v. Carey*, 706 F.2d 377 (2d Cir. 1983). In that case, the Second Circuit expressed the view that, in enacting § 1985(3), Congress sought to prohibit political discrimination in general. The court noted that one Senator acknowledged at the time that the statute would have to be applied against a man suffering discrimination "because he was a Democrat . . . or . . . a Catholic, . . . or . . . a Methodist . . . or . . . a Vermonter." *Cong. Globe*, 42nd Cong., 1st Sess. 567, col. 2 (1871) (remarks of Senator Edmunds of Vermont). *Id.* at 387-88. The court concluded:

> Nothing in the many cases applying the statute to racial discrimination suggests that we should now turn history on its head and exclude from protection the group that seems to have been foremost in the mind of Congress.

Id. at 388.

Other circuits, however, have restricted § 1985(3) to conspiracies directed towards racial classes. *See, e.g., Grimes v. Smith*, 776 F.2d 1359, 1366, 1367 (7th Cir. 1985) (holding that political classes are not protected by the statute); *Brown v. Reardon*, 770 F.2d 896 (10th Cir. 1985) (same); *Harrison v. KVAT Food Management*, 766 F.2d 155 (4th Cir. 1985) (same).

The confusion about the scope of § 1985(3) should be cleared up because of the implications it has for the fundamental rights of citizens to practice their professions and to go about their lives free from discrimination based on their political beliefs. The founders of this nation were fleeing political as well as religious persecution when they created this society. Our citizens' rights in both these areas are protected by the First Amendment. Only this Court can definitively resolve the debate surrounding this vital issue.

The Petitioner was a public school administrator who was driven from her position because, in carrying out the duties of her profession, she lodged charges against school teachers, who were members of different political parties, for intolerable conduct that jeopardized the children in their care. The Petitioner's complaint stated facts sufficient to lead a reasonable person to conclude that her political enemies did indeed conspire against her, not because of any professional shortcomings on her part, but because she deigned to discipline teachers who were politically connected.

If this nation stands for anything, it stands for the principle that a public educator should be free to perform the duties of her position and to protect the children in her care without interference and retaliation from those whose political views differ from hers.

CONCLUSION

For the reasons stated above, the undersigned respectfully requests that this Court issue a writ of certiorari in this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED AND ENTERED OCTOBER 5, 1999

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 98-2165

LUISA SOTO-RIVERA,

Plaintiffs, Appellants,

v.

DOMINISA SANTIAGO-GUADARRAMA, IN HER PERSONAL AND OFFICIAL CAPACITY, AS SCHOOL SUPERINTENDENT, RIO PIEDRAS I DISTRICT,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO
[Hon. Jaime Pieras, Jr., *U.S. District Judge*]

Before

Boudin, *Circuit Judge*,
Campbell, *Senior Circuit Judge*,
and Stahl, *Circuit Judge*.

Luisa Soto-Rivera on brief pro se.

Carlos Lugo Fiol, Solicitor General, *Edda Serrano Blasini*, Deputy Solicitor General, and *Leticia*

Appendix A

Casalduc-Rabell, Assistant Solicitor General, on brief for appellees.

October 5, 1999

Per Curiam. Plaintiffs were warned in two court orders that a failure to clarify their claims of political discrimination could lead to a dismissal of their complaint with prejudice. They also were directed to attend the initial scheduling conference through a representative who was prepared to explain the complaint. Although two amended complaints were filed, the allegations against each defendant remained too vague and ambiguous to enable the defendants to file meaningful answers. The attorney who appeared for plaintiffs at the pretrial conference was not prepared to explain their claims, and the response to defendants' motion to dismiss indicated that there would be no further clarification.

Under the circumstances (1) we see no abuse of discretion nor other error in the dismissal *with prejudice* of the federal claims against the defendants in their individual capacities, and the dismissal of the supplemental state-law claims without prejudice for want of jurisdiction. We also see (2) no basis for objection to the dismissal of the official capacity claims since plaintiffs conceded the ground for dismissal below, and (3) no prejudice to plaintiffs from the earlier decision that a proposed claim under the Americans with Disabilities Act could not be properly joined in this action.

We do not reach defendants' argument for a "heightened pleading" standard, since this complaint was properly

dismissed for failure to comply with two court orders. *Cf. Judge* v. *Lowell*, 160 F.3d 67, 73 (1st Cir. 1998) (holding that to protect the policies underlying the doctrine of qualified immunity a trial court may exercise its discretion to require specificity in the pleading of the element of intent).

The judgment is affirmed.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 98-2165

LUISA SOTO-RIVERA

Plaintiffs, Appellants,

v.

DOMINISA SANTIAGO-GUADARRAMA, IN HER PERSONAL AND OFFICIAL CAPACITY, AS SCHOOL SUPERINTENDENT, RIO PIEDRAS I DISTRICT,

Defendants, Appellees.

JUDGMENT

Entered: October 5, 1999

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:
Phoebe D. Morse, Clerk

By: s/ JANICE M. O'NEIL
Chief Deputy Clerk

APPENDIX B — OPINION ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO DATED AND FILED JULY 23, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LUISA SOTO RIVERA, et al.

Plaintiff

vs.

CIVIL NO. 98-1061 (JP)

DOMINISA SANTIAGO GUADARRAMA, et al.

Defendant

OPINION ORDER

Plaintiffs filed this action alleging that Defendants, various employees of the Commonwealth of Puerto Rico, illegally discriminated against coplaintiff Luisa Soto Rivera ("Soto") based on her political affiliation. Soto filed Plaintiffs' original complaint *pro se*, and because her pleading understandably failed to adequately convey her claim, the Court ordered her to obtain legal counsel. Upon counsel's appearance, the Court ordered Plaintiffs to file an amended complaint, which, after some delay, Plaintiffs did. The Court noted its disappointment with Plaintiffs' Amended Complaint in a June 2 Order directing Plaintiffs to file an [Initial Scheduling Conference] memorandum "explaining

in detail each cause of action . . . the legal (statutory and/or constitutional) basis for each cause of action, the facts they intend to prove in order to make out a *prima facie* case for each separate cause of action, and the evidence they intend to proffer in order to make that proof." In that June 2 Order, the Court further ordered Plaintiffs to file yet another amended complaint, "free from typos and grammatical errors, that state[s] separately each cause of action, which Plaintiffs are utilizing it against which Defendants, its legal basis, and the facts giving rise to it." The Court expressly stated that "failure to adequately clarify the Complaint" would result in dismissal of any claims not presented in accordance with the June 2 Order. On June 11, Plaintiffs filed their Second Amended Complaint. On June 23, 1998, the Court met with the parties for the Initial Scheduling Conference. Plaintiffs' attorney did not show up, instead sending his partner, who knew nothing of the facts of the case, essentially rendering the ISC a useless endeavor. In light of Plaintiffs' attorney not showing up, the Court refused to hold a scheduling conference and postponed the ISC pending the outcome of Defendants' prospective Motion to Dismiss, which is now before the Court.

Defendants contend (1) that any claims brought by Plaintiffs under 42 U.S.C. § 1983 against Defendants in their official capacity must be dismissed as violative of the Eleventh Amendment; (2) that Plaintiffs have failed to state a claim under 42 U.S.C. § 1983 for which relief may be granted; (3) that Plaintiffs have failed to state a claim of conspiracy under 42 U.S.C. § 1985 for which relief may be granted; and (4) that Soto's coplaintiffs lack standing to sue under § 1983.

Appendix B

The Court will start with the easy issues. First, Plaintiffs agree, as they must, that they may not bring any claims against the Commonwealth of Puerto Rico under § 1983, because neither the United States Congress nor the legislature of Puerto Rico has waived Puerto Rico's immunity from suit in federal court for the purposes of § 1983. *See* U.S. Const. amend. XI ("The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States . . . ") and *Culebras Enterprises Corp. v. Rivera Rios*, 813 F.2d 1037, 1045 (1st Cir. 1987) (Eleventh Amendment protection extends to Puerto Rico, and Puerto Rico has not waived that immunity). *See also Hafer v. Melo* 502 U.S. 21, 25 (1991) ("Suits against state officials in their official capacity should be treated as suits against the State"). Therefore, all claims against Defendants in their official capacity are hereby **DISMISSED WITH PREJUDICE.**

Second, Plaintiffs agree, as they must, that Soto's coplaintiffs are not suing under § 1983, but have joined the case invoking the Court's supplemental jurisdiction.

Third, the Court turns to Plaintiffs' conspiracy claim under § 1985. As a general rule, plaintiffs asserting a violation of § 1985(3)[1] "must allege the existence of:

> (1) a conspiracy, (2) a conspiratorial purpose to deprive a person or class of persons, directly or indirectly, of the equal protection of the laws or

---

1. Although they have failed to specify, the court assumes Plaintiffs' § 1985 claim comes under subsection 3.

> of equal privileges and immunities under the laws, (3) an overt act in furtherance of the conspiracy, and (4) either (a) an injury to person or property, or (b) a deprivation of a constitutionally protected right or privilege."

Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). With respect to their conspiracy claim, Plaintiffs' Second Amended Complaint violates the Court's express order to clarify the complaint and to include the facts giving rise to each of Plaintiffs' causes of action. Given the Court's order, the Court will apply the pleading requirements of *Aulson* strictly; Plaintiffs' Second Amended Complaint fails to make the grade. The allegations are simply too general. Plaintiffs fail to explain which Defendants did what to Soto. Mere recitation of terms like "discrimination," "harassment," "hostile environment," and "persecution" are not sufficient to inform either the Court or Defendants what Plaintiffs are alleging they did wrong. *Cf. Rodriguez v. Doral Mtg. Corp.*, 57 F.3d 1168, 1171 (1st Cir. 1995) (defendants have an "inalienable right to know in advance the nature of the cause of action being asserted against them"). Plaintiffs' other, slightly-less boilerplate allegations -- that defendants "obstructed [Soto] from being able to perform her duties as principal and sabotaged her work [and] prevented her from attending meetings, made false allegations about her competence and honesty and conspired with the teachers Federation to instill animosity against her by parents and students . . . because defendants were either 'Populares' or 'Independentistas' " -- are likewise unhelpful. The Court's order was designed to prevent exactly such general statements. What Plaintiffs have failed to explain are the

real facts -- which Defendants did what to sabotage Soto's work and which Defendants did what to prevent Soto from attending meetings? More specifically, the Second Amended Complaint fails to specify any overt act in furtherance of the alleged conspiracy. For that reason, and because the Second Amended Complaint fails to comply with the Court's order, the Court hereby **DISMISSES** Plaintiffs' claim under 42 U.S.C. § 1985(3) **WITH PREJUDICE.**[2]

Finally, the Court turns to Plaintiffs' § 1983 claim of political discrimination. Again, the Second Amended Complaint fails to comply with the Court's order, and it also fails to meet the heightened pleading requirement established by the United States Court of Appeals for the First Circuit in civil rights cases. *See Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 23-24 (1st Cir. 1990); *Correa-Martinez v. Arrillaga Belendez*, 903 F.2d 49, 52-53 (1st Cir. 1990) . As noted above, the allegations simply fail to state what each Defendant did to violate Soto's First Amendment rights. They are therefore insufficient under the pleading requirements for civil rights cases such as this one and, likewise, violate the Court's order to clarify.

In their motion, Defendants correctly pointed out that *Leatherman v. Tarrant Co. Narcotics Intelligence and*

2. It is unclear whether classifications based on political affiliation are sufficiently invidious, as required by *Griffen v. Breckenridge*, 403 U.S. 88, 102 (1971), to warrant liability under § 1985(3). *See Aulson v. Blanchard*, 83 F. 3d 1, 3 (1st Cir. 1996); *Davila Aleman v. Feliciano Melecio*, 992 F. Supp. 91, 102 n. 14 (D. Puerto Rico 1998) (J. Pieras). As the issue is complicated and as the Court bases its decision on other grounds, the Court will not reach the issue. *See Davila Aleman*, 992 F. Supp at 103 n. 14.

Coordination Unit, 507 U.S. 163 (1993) held that courts could not establish elevated pleading requirements for § 1983 cases against municipalities. But courts have been reluctant to extend its holding beyond municipal liability cases. *E.g., Breidenback v. Bolish*, 126 F.3d 1288, 1292 n.2 (10th Cir. 1997) *Cf. Feliciano v. DuBois*, 846 F. Supp. 1033, 1042 (D. Mass. 1994) (discussing possible ramifications of *Leatherman* on First Circuit precedent). Even more so where, as here, the Court provided Plaintiff with ample opportunity and express orders to provide specific factual allegations, the Court finds *Leatherman* inapplicable. *See Feliciano*, 846 F. Supp. at 1042-43 (*Leatherman* "probably should not be construed as precluding a court from making an early case management order requiring that, in some form of written submission to the court (an amended complaint being only an allowable form and not a required form), the plaintiff clarify ambiguous claims to enable opposing parties and the court to evaluate jurisdictional and other potentially dispositive issues.") Therefore, because Plaintiffs' Second Amended Complaint failed to comply with the Court's order for clarification, the Court hereby **DISMISSES** Plaintiffs' claim under § 1983 **WITH PREJUDICE.**[3]

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3. The Court also rests this Order dismissing Plaintiffs' claims on Plaintiffs' failure to come to the Initial Scheduling Conference "prepared to explain, in detail, each cause of action, . . . the facts they intend to prove in order to make out a *prima facie* case for each separate cause of action, and the evidence they intend to proffer in order to make that proof." Had Plaintiffs at least complied with that order and come to the ISC with a full explanation of the facts, the Court and Defendants would not be required to rely on the Complaint. But because Plaintiffs have, at every turn, refused to let anyone know what the facts are, the Court finds dismissal justified.

Appendix B

A review of the allegations in the Complaint reveals that the mistreatment Soto allegedly suffered was not about political discrimination. If Plaintiffs' allegations are indeed true, a question about which the Court expresses no opinion, the actions directed against Soto stemmed from her decision to report two other teachers, who obviously had numerous allies, for acts unbecoming a teacher. The complaint also makes clear that the primary acting force behind any mistreatment of Soto was the Teachers Federation, which is not a party to this case (and which could not be sued in this Court). Although these conclusions play no part in the Court's decision to dismiss Plaintiffs' federal claims, they explain Plaintiffs' inability to level specific facts in support of her political discrimination claims.

The Court has dismissed each of Plaintiffs' federal claims. The Court refuses to accept supplemental jurisdiction over Plaintiffs' claims under Puerto Rico law. For the reasons stated herein, the Court hereby **DISMISSES PLAINTIFFS' FEDERAL CLAIMS WITH PREJUDICE AND DISMISSES PLAINTIFFS' SUPPLEMENTAL CLAIMS WITHOUT PREJUDICE.**

IT IS SO ORDERED, ADJUDGED, AND DECREED.

In San Juan, Puerto Rico, this 23rd day of July 1998.

By: s/ Jaime Pieras, Jr.
JAIME PIERAS, JR.
UNITED STATES DISTRICT JUDGE